

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Ethics and Elections Committee

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BILL: CS/SB 2000

INTRODUCER: Ethics and Elections Committee and Senator Posey

SUBJECT: Ethics/Public Officers and Employees

DATE: March 21, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Committee Substitute for Senate Bill 2000 (hereinafter “CS/SB 2000”) clarifies and revises portions of Florida’s Code of Ethics, and provides for additional restrictions on the conduct of current and former government employees and elected officials.

The CS/SB 2000 extends the “Little Hatch Act” to prohibit all government employees from being involved in political campaigns while on duty.

The proposed language amends the prohibition against using inside information gained while in a public position to benefit oneself or another, clarifying that the prohibition applies to former employees and officers with an exception for information relating exclusively to governmental practices or procedures. The “revolving door” prohibition against representing a client before one’s former agency is revised to apply to other-personal-services (OPS) employees. The proposed language also clarifies that the two-year “revolving door” prohibition is applicable to agency employees whose positions were transferred to the Selected Exempt Service System from the Career Service System under the “Service First” law.

The CS/SB 2000 requires that the Commission on Ethics be the filing depository for the conflict of interest disclosure statement that is applicable for sealed competitive bidding rather than the Department of State.

The proposed language applies the two-year lobbying prohibition for former local elected officials to representations before the entire government body or agency they served (which would include staff), rather than just the body of which they were a member.

The CS/SB 2000 changes the method for valuing assets, and liabilities relating to assets, that are held by the reporting person as a joint tenant with the right of survivorship with regard to reporting full and public disclosure of interests. The bill also makes a technical amendment that deletes language inconsistent with this proposed language.

The CS/SB 2000 requires that the certified reminder mailing for statement of financial interests delinquency notices sent in July of each year have a return receipt, allowing the commission to determine whether the mailing was actually received and by whom the notice was received.

The proposed language requires annual gift disclosure forms to be filed for the last portion of one's term of office or employment. The proposed language allows quarterly gift disclosure forms to be considered timely-filed if they are postmarked on or before the due date. The CS/SB 2000 also requires annual honorarium-expense disclosure forms to be filed for the last portion of one's term of office or employment.

The proposed language allows a violator's restitution to be paid to the agency of which the violator was a member in lieu of the state's General Revenue Fund. The proposed language also allows the Attorney General's costs and fees associated with collecting the penalty to be assessed against the violator when the Attorney General is required to collect a penalty through a civil action in court. Furthermore, the CS/SB 2000 removes the language of Section 112.317(6), Florida Statutes, which the federal courts have declared unconstitutional (the removed language made it a misdemeanor to breach the confidentiality of an ethics proceeding).

The proposed language eases existing post-employment restrictions for state employees whose jobs are privatized and who then go to work for the private entity.

The proposed language adds the prohibition that a lobbyist cannot serve as a member of the Commission on Ethics. The CS/SB 2000 prohibits members of the commission from lobbying any state or local government entity. The proposed language also provides an exception to these prohibitions for lobbyists who are members of the commission on July 1, 2006, until the expiration of their terms. The CS/SB 2000 clarifies the commission's rule-making authority regarding the appeals of fines for the untimely filing of lobbying reports. The proposed language automatically suspends the registration of lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to pay a fine until the fine is paid or waived. The CS/SB 2000 requires the commission to notify all affected principals of each registration suspended and reinstated.

The CS/SB 2000 allows witnesses required by the commission to testify outside the county of their residence to receive per diem and travel expenses reimbursed at the state rate. The bill also makes it a crime to tamper with witnesses in an Ethics Commission proceeding.

The act shall take effect on October 1, 2006.

The CS/SB 2000 substantially amends the following sections of the Florida Statutes: s.104.31, s. 112.313, s. 112.3144, s. 112.3145, s. 112.3147, s. 112.3148, s. 122.3149, s. 112.317, s. 112.3185, s. 112.321, s. 112.3215, s. 112.322, and s. 914.21.

## II. Present Situation:

Section 104.31, F.S., prohibits a state, county, or municipal officer or employee from using any “official authority or influence” to cause interference with an election nomination, or a person’s vote.<sup>1</sup> These same persons are also prohibited from “either directly or indirectly coerce[ing] or attempt[ing] to coerce, command, or advise any other officer or employee to pay, lend, or contribute money or anything else of value to any party, committee, organization, agency, or person for political purposes.”<sup>2</sup> These persons are prohibited from interfering with a personal right of any other officer or employee or coercing or advising any other officer or employee about the purchase of commodities.<sup>3</sup> Section 104.31, F.S., does not prohibit any public employee from participating in political activities during off-duty hours.<sup>4</sup>

Section 112.311, F.S., articulates three general objectives in the formation of the ethics code. The first is that the public interest “requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.”<sup>5</sup> Second, “the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve.”<sup>6</sup> Third, “it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions ... be regularly disclosed to the people.”<sup>7</sup>

The Legislature has also set forth policies through which the objectives are to be achieved. One is that “no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest.”<sup>8</sup> The code also states that “public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public,” and are “bound to observe, in their official acts, the highest standards of ethics consistent with this code ... regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.”<sup>9</sup>

The Code of Ethics itself addresses an array of conduct by current and former government employees and officials. Currently, public officers, agency employees, and local government attorneys are barred from disclosing or using information not available to the public and gained by reason of his or her official position for his or her personal gain or benefit, or for the personal gain or benefit of any other person or business entity.<sup>10</sup>

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<sup>1</sup> Section 104.31(1)(a), Florida Statutes.

<sup>2</sup> Section 104.31(1)(b), Florida Statutes.

<sup>3</sup> Section 104.31(1)(c), Florida Statutes.

<sup>4</sup> Section 104.31(3), Florida Statutes.

<sup>5</sup> Section 112.311(1), Florida Statutes.

<sup>6</sup> Section 112.311(2), Florida Statutes.

<sup>7</sup> Section 112.311(3), Florida Statutes.

<sup>8</sup> Section 112.311(5), Florida Statutes.

<sup>9</sup> Section 112.311(6), Florida Statutes.

<sup>10</sup> Section 112.313(8), Florida Statutes.

A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the governing body of which the person was an officer for a period of 2 years after vacating that office.<sup>11</sup> This has been interpreted to apply only to former officeholders lobbying current officeholders.

Officeholders and certain state employees are required to file yearly statements of their personal financial interests. The commission and each supervisor of elections are required to send notice by certified mail to the individuals that have failed to timely file the required statements. A fine of \$25 per day for each late day up to a maximum amount of \$1500 may be imposed for a late filed statement. Any reporting person may appeal or dispute a fine, and may base the appeal upon unusual circumstances surrounding the failure to file on the designated due date. The person is entitled to a hearing before the commission, which is permitted to waive the fine in whole or in part for good cause shown.<sup>12</sup>

Violations of any provision of the Code of Ethics can result in various penalties, which include requiring the violator to pay restitution of any pecuniary benefits received because of the violations committed.<sup>13</sup>

The Commission on Ethics has the duty of receiving and investigating sworn complaints of violations of the Code of Ethics.<sup>14</sup> In an investigation, the commission has the power to subpoena, and currently, witnesses subpoenaed by the commission are paid mileage and witness fees as authorized for witnesses in civil cases.<sup>15</sup>

### **III. Effect of Proposed Changes:**

#### Section 1.

The CS/SB 2000 extends the “Little Hatch Act” to prohibit all government employees from being involved in political campaigns while on duty.

#### Section 2.

The proposed language amends the prohibition against using inside information gained while in a public position to benefit oneself or another, clarifying that the prohibition applies to former employees and officers with an exception for information relating exclusively to governmental practices or procedures.

The CS/SB 2000 applies the “revolving door” prohibition against representing a client before one’s former agency to OPS state employees.

The proposed language clarifies that the two-year “revolving door” prohibition against representing a client before one’s former agency applies to agency employees whose positions

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<sup>11</sup> Section 112.313(14), Florida Statutes.

<sup>12</sup> Section 112.3145, Florida Statutes.

<sup>13</sup> Section 112.317, Florida Statutes.

<sup>14</sup> Section 112.324(1), Florida Statutes.

<sup>15</sup> Section 112.322(4), Florida Statutes.

were transferred to the Selected Exempt Service System from the Career Service System under the “Service First” law.

The CS/SB 2000 requires that the Commission on Ethics be the filing depository for the conflict of interest disclosure statement that is applicable for sealed competitive bidding rather than the Department of State.

The proposed language applies the two-year lobbying prohibition for former local elected officials to representations before the entire government body or agency they served (which would include staff), rather than just the body of which they were a member.

### Section 3.

The CS/SB 2000 changes the method for valuing assets, and liabilities relating to assets, that are held by the reporting person as a joint tenant with the right of survivorship with regard to reporting full and public disclosure of interests.

### Section 4.

The CS/SB 2000 requires that the certified reminder mailing for statement of financial interests delinquency notices sent in July of each year have a return receipt, allowing the commission to determine whether the mailing was actually received and by whom the notice was received.

### Section 5.

The CS/SB 2000 makes a technical amendment that deletes language that would be inconsistent with Section 3 of the bill.

### Section 6.

The CS/SB 2000 requires annual gift disclosure forms to be filed for the last portion of one’s term of office or employment.

The proposed language allows quarterly gift disclosure forms to be considered timely-filed if they are postmarked on or before the due date.

### Section 7.

The CS/SB 2000 requires annual honorarium-expense disclosure forms to be filed for the last portion of one’s term of office or employment.

### Section 8.

The CS/SB 2000 allows the violator’s restitution to be paid to the agency of which the violator was a member in lieu of the state’s General Revenue Fund.

The proposed language allows the Attorney General’s costs and fees associated with collecting the penalty to be assessed against the violator when the Attorney General is required to collect a penalty through a civil action.

The CS/SB 2000 removes the language of Section 112.317(6), Florida Statutes, which the federal courts have declared unconstitutional (the removed language made it a misdemeanor to breach the confidentiality of an ethics proceeding).

Section 9.

The proposed language eases existing post-employment restrictions for state employees whose jobs are privatized and who then go to work for the private entity.

Section 10.

The proposed language adds the prohibition that a lobbyist cannot serve as a member of the Commission on Ethics. The CS/SB 2000 prohibits members of the commission from lobbying any state or local government entity. The CS/SB 2000 provides an exception to these prohibitions for lobbyists who are members of the commission on July 1, 2006, until the expiration of their terms.

Section 11.

The proposed language clarifies the commission's rule-making authority regarding appeals of fines for the untimely filing of lobbying reports.

The proposed language automatically suspends the registration of lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to pay a fine until the fine is paid or waived. The CS/SB 2000 requires the commission to notify all affected principals of each registration suspended and reinstated.

Section 12.

The proposed language conforms changes made in Section 11 to a different form of the same statute effective April 1, 2007.

Section 13.

The proposed language allows witnesses required by the commission to testify outside the county of their residence to receive per diem and travel expenses reimbursed at the state rate.

Section 14.

The CS/SB 2000 makes it a crime to tamper with witnesses in an Ethics Commission proceeding.

Section 15.

The act shall take effect on October 1, 2006.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There will be indeterminate costs associated with payment of state per diem and travel for commission witnesses required to travel outside their county of residence to testify in commission proceedings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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